The fundamental flaw in the Commission's proposed standard for "good faith" is that it begs the question of what constitutes "comparable facilities." As discussed below, even after adoption of the Commission's proposed clarifications, the definition of "comparable facilities" will necessarily vary from system to system and be subject to different interpretations. Given this uncertainty, it would be unreasonable to assume bad faith for simply disagreeing with the PCS licensee's definition of comparable facilities. Contrary to the twisted logic of PCIA, the refusal to accept an offer from a PCS licensee is not necessarily evidence of bad faith, but instead is likely to be a sign that the incumbent disagrees over what is necessary to ensure that the replacement facilities are indeed comparable.

Perhaps the most telling indication of the grossly one-sided nature of the FCC's proposed definition of good faith is that all of the penalties that the PCS licensees cheerfully proposed for failure to act in good faith would only have a negative or deterrent impact on the incumbent microwave licensees. After recommending the adoption of a self-serving definition of what constitutes "good faith," PCIA has the nerve to suggest that the penalty for not negotiating in good faith should be conversion of the incumbent's system to secondary status in 90 days. PCIA claims that such a penalty for bad faith will ensure that the parties come to the table prepared to reach a fair agreement.[71] This proposal will do nothing of the sort: its one-sided nature will put a gun to the head of the incumbents and compel them to accept whatever is offered.[72] Not to be outdone in the chutzpah sweepstakes, CTIA helpfully

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[71] PCIA, p. 17.

[72] CTIA is using this same approach in dealing with UTC and the other organizations representing the incumbent microwave licensees. As a result of a meeting with CTIA, the incumbents distributed a memorandum outlining the incumbents' view on basic principles for an industry-supported solution, a "Statement of

suggests that a violation of good faith should result in revocation of the incumbent's license and termination of relocation rights.[73] Again, this penalty will only serve to coerce the incumbents during the negotiation process. Moreover, neither of the proposed penalties would impose any kind of sanction on the PCS licensees because the penalties are premised on a good faith standard that would only apply to incumbent microwave licensees. What penalty should apply to an unreasonable offer from a PCS licensee: revocation of its PCS license?

UTC agrees with Tenneco and AAR that rather than equating a disagreement or counter offer by the incumbent as an act of bad faith, the FCC's rules should provide flexible rules that allow for bilateral negotiations.[74] Otherwise, the Commission would eliminate the possibility of the parties actually agreeing on a mutual basis upon what constitutes comparable replacement facilities.

The FCC must not lose sight of the fact that for many incumbents, particularly in rural areas, the mandatory negotiating period will be their first and only opportunity to negotiate over relocation terms and conditions. The term "good faith" is meant to govern the conduct of negotiations during the mandatory negotiation period. It is not meant to substantively restrict either party's ability to negotiate over replacement facilities. Accordingly, UTC reiterates that

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Principles," and requested that CTIA respond to these principles. When no response was received for over a month, UTC sent another letter to CTIA asking for a response or an alternative basis for discussion. CTIA responded only with a letter alleging "bad faith" on the part of UTC and the incumbent associations. This strategy, resorting to baseless allegations of "bad faith," is used to prevent fair negotiations (in which both sides make offers and counteroffers) and to intimidate incumbents into accepting initial PCS offers. Copies of these pieces of correspondence are included as Attachment A.

[73] CTIA, p. 9.

[74] Tenneco, p. 8; AAR, p. 14.

"good faith" should be given its common sense everyday business meaning: an honest belief. the absence of malice and the absence of design to defraud or to seek an unconscionable advantage.[75] SBMS endorsed a similar definition noting that under the Uniform Commercial Code good faith is required in every agreement.[76] In the context of microwave relocations, good faith negotiations should encompass an obligation between the parties to meet, exchange views, honor reasonable requests for information, and give serious consideration to offers in a timely manner. As AAR correctly points out, an attempt to create a more precise definition of what constitutes good faith negotiations "reflects an improper level of government micromanagement of negotiations between sophisticated parties with substantial resources and has absolutely no rightful place in the FCC's rules."[77]

C. Comparable Facilities

1. Three Primary Factors in Determining Comparability

Nearly all commenting parties are in agreement that the three main factors that should be looked to in determining whether a facility is comparable are: (1) communications throughput; (2) system reliability; and (3) operating cost. However, a number of parties echo UTC's recommendation that the rules afford some flexibility to consider other factors on an individual case basis. As AAR notes, the shorthand formula of communications throughput, system reliability and operating cost, must not be allowed to sacrifice the attainment of true

[75] *Black's Law Dictionary*, Fifth Edition
[76] SBMS, p. 3.
[77] AAR, p. 14.

comparability in favor of administrative convenience.[78] For this reason these factors should act more as guideposts for the relocation negotiations than as rigid standards.

Communications Throughput -- In its comments UTC proposed to clarify that the definition for communications throughput is the amount of information transferred within the system for a given amount of time without compression. In addition, UTC supports Valero's proposed clarification that throughput be measured in terms of the incumbent microwave system's total capacity rather then the actual level of capacity being utilized.[79] Most utilities and pipelines prudently engineer their systems with reserve capacity in order to accommodate system growth, alternate routing and emergency communications.

System Reliability -- Several commenters agree with UTC's opposition to the Commission's proposal to define comparable reliability as that equal to the overall reliability of the incumbent system. For example, SCG argues that it is fallacious to limit the reliability percentage of a radio link to the reliability percentage of any other portion of the system, or to the rest of the overall system. SCG maintains, and UTC agrees, that PCS providers should be required to provide individual replacement components to specifications that are equal to or exceed the reliability percentage of the individual existing components.[80] As UTC indicated in its comments, a PCS licensee is in no position to second guess an incumbent's existing system design and choice of components.

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[78] AAR, p. 5.
[79] Valero, p. 4
[80] SCG, p. 15.

Operating Cost -- UTC concurs with PCIA that operating costs should include total costs to operate and maintain the replacement system, and that the facilities will be considered comparable if the specific increased costs associated with replacement facilities are paid by the PCS licensee. However, UTC opposes PCIA's suggestion that reimbursement for increased recurring costs should be limited to a single five-year term.[81] During the mandatory negotiating stage, the duration of responsibility for increased recurring charges, such as additional rents, should be resolved between the parties through negotiation. However, increased recurring costs that are imposed as the result of an involuntary relocation should be borne by the PCS licensee for a period of at least ten years. Such an obligation is appropriate because the incumbent should not have to bear the increased costs of new facilities that it did not have a choice in accepting.

2. Tradeoffs Should Be Purely At The Discretion Of The Incumbent

UTC strenuously opposes the suggestion of some PCS licensees that a PCS licensee should be allowed to unilaterally "trade-off" system parameters in order to achieve comparable replacement facilities. As AAR notes, the concept of comparable facilities is central to the relocation process because it is indispensable to the continued safe and reliable operations of the nation's railroads, utilities and pipelines.[82] Arbitrary trading off of system components would compromise the guarantee of comparable replacement facilities that are

[81] PCIA, p. 19.
[82] AAR, p. 5.

equal or superior to the existing system. The system design must be comparable to the actual system.

PCIA's support for allowing PCS licensees to trade-off system parameters is based on theoretical comparability rather than actual comparability in the field. Over the past 30 years utilities, pipelines, railroads and public safety agencies have designed and constructed complex microwave systems to meet a multitude of critical functions. These systems are individually tailored to the specific operating requirements of the incumbents. What PCIA fails to recognize is that it is highly unlikely that PCS licensees will have either the knowledge or expertise regarding the incumbent's operational requirements to dictate appropriate trade-offs. More importantly, as evidenced by PCS comments throughout this and related proceedings, PCS licensees do not necessarily have the inclination to construct systems to the level of reliability that incumbents require.

UTC shares American Public Power Association's (APPA) concern that, if given the opportunity to pick and choose among the elements of comparability, PCS licensees may emphasize characteristics that are most favorable to their own pecuniary interests.[83] Accordingly, UTC reiterates that unless the PCS licensees are willing to assume the liability of malfunctioning electrical lines, damaged pipelines, or derailed trains, and the attendant havoc these incidents cause, it is unreasonable to allow these entities to substitute their judgment for that of the incumbents. Trade-offs should only be allowed at the option of the incumbents.

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[83] APPA, p. 3.

3. Other Aspects of Comparability

Incumbent microwave licensees were in uniform agreement that in order to provide comparable replacement facilities it will often be necessary to relocate entire microwave systems. In contrast, a number of PCS licensees stridently argue that the transition rules only require the relocation of individual microwave links.[84] Despite their bluster, few of the PCS licensees offer any support for their position other than a rote recitation of the FCC rule. The PCS licensees are elevating form over substance, as UTC stated in its comments. While it is true that technically the PCS licensee's relocation obligations are only triggered with regard to those specific microwave paths to which the PCS licensee causes interference, the Commission has also stated that "PCS licensees must provide incumbents with a seamless transition from the old facilities to the replacement facilities."[85] AAR correctly points out that in making this seamless transition the PCS licensee cannot ignore the interrelated nature of the links in a microwave system and the very real possibility that partial relocation could degrade an entire system.[86]

Contrary to the self-serving statement of Western, in most instances piecemeal relocation is neither sensible nor appropriate.[87] For many incumbents, a piecemeal link-by-link relocation process would raise numerous technical and operational concerns. This is particularly true for utilities, pipelines and railroads that employ large, multistate microwave systems. The comments of Williams Wireless Inc. (WWI) are illustrative of the problems

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[84] For example, PrimeCo, p. 18; Western, p. 14.
[85] *NPRM*, ¶. 76 (emphasis added).
[86] AAR, p. 6.
[87] Western, p. 14.

raised by a link-by-link relocation for a large system operator. WWI anticipates that communications failures will increase noticeably if a piecemeal replacement approach is followed. It indicates that in a microwave system as large and complex as its own, the multiple technologies, different frequency links, dissimilar vendor equipment and disparate testing devices employed in the same system as a result of a piecemeal relocation, would create an overly complex mosaic of hybrid technology which would increase points of failure and decrease reliability and efficacy of the operation of the system. WWI also indicates concern that a prolonged link-by-link relocation will destabilize the integrity of its network on an on-going basis, reduce its manageability, impair throughput and increase operational costs.[88]

Based on the above, and on the lack of reasoned opposition, UTC renews its request that the FCC clarify that PCS licensees are required to pay any expense incurred by an incumbent that is necessary to ensure the integrity of the entire telecommunications system. In this way, a PCS licensee may be obligated to relocate additional links in a multi-link system or pay the additional costs associated with integrating replacement links in different bands or employing different modulation techniques in order to preserve the system's overall integrity.

UTC strongly agrees with those commenters that oppose the Commission's proposal to exclude what it terms extraneous expenses, such as fees for attorneys and consultants that

[88] WWI, pp. 3-4.

are hired by the incumbent without the advance approval of the PCS relocator.[89] Such a limitation on reimbursable expenses is inconsistent with the Commission's underlying commitment to have the PCS licensees pay all relocation expenses.

The Commission should not be misled by the hysteria of the PCS licensees. It is neither unconscionable nor excessive for an incumbent to seek reimbursement for all reasonable expenses that it incurred as a result of its forced participation in mandatory negotiations over the relocation of its facilities. As commenters note, there is no accounting principle that could justify exclusion of fees for attorneys and consultants in the highly technical and highly regulated environment in which the negotiations will take place. Further, AAR correctly points out that under Generally Accepted Accounting Principles, such fees would in most cases be treated as the direct costs of the relocation process.[90] In any event, it is only fair that all of the reasonable costs of this relocation be borne by the emerging technology licensees who will cause this disruption, and who will benefit directly from microwave displacement.

The incumbent community is in complete agreement with UTC in opposing the Commission's proposal to require incumbents to bear any additional costs that might be incurred as a result of replacing analog microwave equipment with digital equipment.[91] Many commenters note that the FCC's recommendation does not account for the fact that digital

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[89] AAR, p. 7; API, p. 15; Cox & Smith, Inc. (C&S), p. 3; LA County, p. 6; Maine Microwave Associates (MMA), p. 1; South Carolina Public Service Authority (Santee Cooper), p. 2; WWI, p. 4.
[90] AAR, p. 7.
[91] AAR, p. 6; APCO, p.6; API, p. 17; CIPCO, p. 2; INGAA, p. 2; LA County, p. 5; MMA, p. 4; Tenneco, pp. 10-11; WWI, p. 5.

microwave equipment is the predominant state-of-the-art technology available now for new microwave systems and is, therefore, in many cases the comparable technology. As Tenneco notes, analog microwave equipment is being phased out by most of the major manufacturers; this creates the very real possibility that an incumbent forced to relocate to analog would find itself stranded without manufacturing support for replacement parts, system maintenance or expansion.[92] In assessing comparability costs, the Commission must necessarily look beyond the incumbents' existing systems but also to what type of microwave systems it would be reasonable for these incumbents to purchase today if they were to do so on their own.

Similarly, UTC joins those commenters that oppose the Commission's suggestion that depreciation of existing equipment should be considered in determining comparability. It should make no difference to the PCS licensee whether the incumbent's existing equipment has been depreciated. Valero correctly points out that excluding the depreciated value would necessarily impose replacement costs on the incumbents that they would not have incurred but for the relocation of their facilities.[93]

Finally, UTC continues to oppose the suggestion that parties who are unable to reach an agreement within one-year after the commencement of the voluntary negotiation period should be required to submit an independent cost estimate. UTC reiterates that such a requirement would impose an affirmative obligation on the parties during the voluntary negotiation period that does not currently exist and would therefore be inconsistent with the

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[92] Tenneco, p. 11.
[93] Valero, p. 4.

Commission's stated intention that this proceeding not reopen the substantive provisions underlying the transition rules adopted in the Emerging Technology Docket.[94]

III. Twelve-Month Trial Period

Under the transition rules, once the parties have reached a relocation agreement and the replacement facilities are actually constructed, the incumbent is entitled to a one-year trial period to determine whether the replacement facilities are indeed comparable. A number of PCS proponents suggest that this rule should be modified. For example, CTIA and PCIA recommend that the incumbents should have no right to return to the 2 GHz spectrum but instead should only have the right to demand that any defects be remedied or that suitable alternative facilities be provided. Such a modification would be in direct contradiction of the FCC's adopted policy. UTC recommends that any such alteration in the incumbents' substantive rights should be resolved between the individual parties through the negotiation process.

UTC is adamantly opposed to PrimeCo's recommendation that the twelve-month trial period should be shortened to one month. This suggestion demonstrates the lack of familiarity and callous attitude that many PCS licensees have towards private microwave systems. Incumbents require a meaningful opportunity to test their new systems under real-world conditions.

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[94] *NPRM*, ¶ 3.

With regard to the comments of some PCS licensees that the twelve-month trial period should not apply to agreements in which the incumbent agrees to a cash settlement to construct its replacement facilities itself, UTC recommends that such agreements to waive the trial period be handled on an individual case basis as part of the negotiation process.

IV. Licensing Issues

A. Interim Microwave Licensing Rules Should Not Be Changed

In its Comments, UTC opposed changes to the FCC's established 2 GHz microwave licensing policies. Incumbent licensees must have flexibility to make necessary system modifications, and cannot be expected to allow their systems to stagnate until a PCS licensee determines that relocation is necessary and opens discussions on relocation. UTC agreed that certain conditions might be appropriate, such as a requirement to demonstrate need for the addition of new links, in order to deter speculation.

Not surprisingly, the PCS commenters who addressed this issue argue that there should be no additional licensing of fixed microwave systems in the 2 GHz band, even on a secondary basis.[95] AT&T requests confirmation that secondary licensees will be required to terminate operation when asked by a PCS licensee or on a date certain.[96]

In developing a licensing policy for the 1850-1990 MHz band, the FCC must balance the desire of PCS licensees for certainty and stability in the 2 GHz environment with the

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[95] PCIA, p. 22; PrimeCo, p. 19; AT&T, p. 13; UTAM, Inc. (UTAM), p.14.
[96] AT&T, p. 13.

legitimate needs of incumbent fixed microwave licensees for some flexibility to maintain their radio systems to meet ongoing communications requirements. As pointed out in the comments of AAR and East River Electric Cooperative, any narrowing of modifications that may be licensed on a primary basis could compromise microwave system reliability.[97] Several commenters suggest that any modifications that do not increase relocation costs for PCS licensees should be permitted on a primary basis, including modifications necessary to correct licensing errors.[98] UTC agrees, and supports Southern's proposal that PCS licensees should bear the burden of demonstrating that a proposed modification will increase the cost of relocation.[99] PCS licensees will be in the best position to determine whether a proposed modification will likely impact their anticipated relocation costs, and should therefore bear the burden in making this showing.[100]

B. Incumbent Microwave Systems Should Be Permitted to Operate on a Co-Primary Basis Indefinitely or Until Relocated Under the 2 GHz Transition Rules

Although the FCC stated its intention in this docket not to reopen the issues resolved in the *Emerging Technologies* docket,[101] its proposal to relegate all 2 GHz fixed microwave systems to secondary status on April 4, 2005, would effect a fundamental reversal of the

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[97] AAR, p. 9; East River, p. 2.
[98] WWI, p. 5; API, p.18; Valero, p. 5; MMA, p. 4.
[99] Southern, p. 13.
[100] In any event, UTC requests the FCC to clarify that any microwave licensing policies that are adopted in this proceeding will only affect incumbent microwave systems operating in the 1850-1990 MHz band, and will not affect the current licensing policies for the remaining portions of the Emerging Technologies spectrum; i.e., 2110-2150 and 2160-2200 MHz.
[101] *NPRM*, para. 3.

FCC's market-based transition plan. The PCS industry supports this proposal because it would effectively compel many incumbents to relocate at their own expense.[102]

UTC and others representing the interests of the incumbents uniformly and strenuously objected to this proposal. It would force incumbents in primarily rural areas to subsidize the introduction of PCS, since these areas are expected to be the last areas built-out by PCS licensees.[103] Termination of relocation rights at an arbitrary date will simply act as an incentive for PCS licensees to wait out the incumbents in the years preceding the termination of the relocation plan.

As noted in the Comments of APPA, Interstate Natural Gas Association Of America (INGAA), and East River Electric Cooperative, the situation would be different if the incumbents had any rights to initiate relocation negotiations or any assurance whatsoever that they will in fact be contacted by PCS licensees to initiate negotiations.[104] However, under the FCC's transition rules, only PCS licensees (and UTAM) have the right to compel relocation negotiations. As noted by Southern California Gas (SCG), it is unreasonable to suggest that an incumbent should forfeit its interference protection simply because the PCS licensee sat on its relocation rights.[105] The only logical corollary to a sunset rule would be the adoption of

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[102] STV, p. 29; PBMS, p. 12; UTAM, p. 19; AT&T, p. 13; Western, p. 16; CTIA, p. 14.
[103] Tenneco, pp. 14-15; WWI, p.6; API, p. 19; APCO, p. 12; SCG, pp. 12-13; NRECA, pp. 7-8; INGAA, pp. 2-3; APPA, pp. 5-6; AAR, pp. 8-9; East River, p. 3; Southern, p. 12.
[104] APPA, p. 5; INGAA, p. 3; East River, p. 3.
[105] SCG, p. 13.

the requirement suggested by Tenneco that all 2 GHz licensees must receive, in advance of the sunset date, a firm offer for relocation.[106]

Despite offering general support for what amounts to a "gift" proposal, comments of the PCS industry included no compelling arguments why the relocation rules should terminate on an arbitrary date. PBMS argues that incumbent licensees in the 2 GHz band should have no greater rights than incumbents in the 12 GHz band when it was reallocated for the Direct Broadcast Satellite (DBS) service.[107] However the open-ended, market-based transition rules for the 2 GHz band were adopted precisely because the rules adopted for the 12 GHz band were later recognized as having been arbitrary and unfair to the microwave incumbents. By setting an arbitrary date by which all microwave systems in the 12 GHz band would become secondary, the FCC effectively compelled all microwave licensees to vacate the band long before viable DBS service was even initiated. The FCC originally proposed to use a similar approach in clearing the 2 GHz band, but instead adopted a market-based relocation program in recognition of the fact that no one can predict: (1) when or if a new service will be initiated; and (2) when or if the new service will be incompatible with incumbent uses. Many PCS proponents advised the FCC that, because of innovate spectrum-sharing techniques, it would not be necessary to relocate many microwave paths, and one PCS licensee was even awarded a Pioneer's Preference for developing this concept.

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[106] Tenneco, pp. 14-15.
[107] PBMS, p. 13.

By announcing an arbitrary date by which incumbents will lose all rights to reimbursement for relocation, the FCC will compel many incumbent microwave licensees to subsidize the introduction of commercial PCS service with no corresponding benefit to them or the public. Even if it is true that most or all relocations will occur within the next 10 years, there is no reason to provide today for the automatic termination of the transition rules on some arbitrary date in the future. Likewise, if the PCS industry matures in the next 10 years such that it does not require relocation of all microwave paths from the 2 GHz band, there is no need to compel these remaining licensees to accept secondary status. UTC strongly urges the FCC to permit incumbent licensees to retain co-primary status in the 2 GHz band until they are relocated pursuant to the transition rules.

V. Conclusion

UTC commends the FCC on its proposal to adopt a cost-sharing mechanism to facilitate the relocation of microwave systems from the 2 GHz band, but urges flexibility in the implementation of this mechanism. UTC opposes unnecessary restrictions on compensable costs and recommends that no cap be imposed on reimbursement costs.

UTC also restates its support for the Commission's proposal not to change the basic transition framework, despite the mischaracterizations being spouted by the PCS industry. UTC urges the Commission not to adopt its proposed definition of "good faith" because it provides no guidance for either incumbents or PCS licensees and merely begs the question of

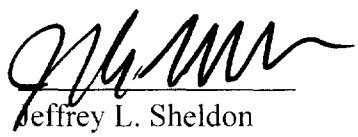
what constitutes "comparable facilities." UTC generally supports the proposed clarification of the term "comparable facilities," with a few modifications.

Finally, UTC opposes: (1) changes to the FCC's established 2 GHz microwave licensing policies; and (2) the FCC's proposal to reclassify incumbents as secondary on a date certain.

WHEREFORE, THE PREMISES CONSIDERED, UTC requests the Federal Communications Commission to take action in accordance with the views expressed in these comments.

Respectfully submitted,

UTC

By: 

Jeffrey L. Sheldon
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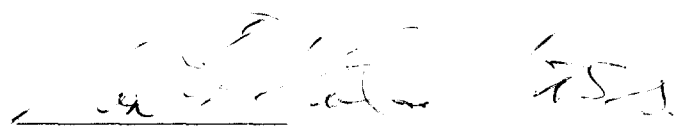

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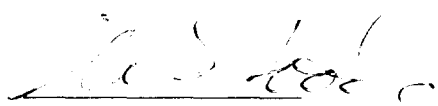

Thomas E. Goode
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Dated: January 16, 1996

Attachment A

UTC
The Telecommunications Association

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November 3, 1995

Wallace Henderson
Cellular Telecommunications Industry Association
1250 Connecticut Ave., NW
Suite 200
Washington, DC 20036

Re: Microwave Industry ADR Proposal

Dear Wallace:

Pursuant to our on-going meetings, attached is a statement of principles regarding the proposed alternative dispute resolution (ADR) procedure for resolving 2 GHz relocation disputes. The incumbent microwave community, consisting of utilities, pipelines, railroads and state and local government agencies, believe that any procedure must incorporate these principles.

As noted in the attached memorandum, there are still a number of issues which need to be resolved. We hope that we can work with your organization to resolve these matters.

Please contact me if you have any questions or comments.

Sincerely,

Thomas E. Goode
Staff Attorney

Enclosure

MEMORANDUM

DATE: **November 3, 1995**

SUBJECT: **Alternative Dispute Resolution Procedure**

At the behest of Senator John Breaux and Representative Ralph Hall, representatives of the nation's utilities, pipelines, railroads and state and local government agencies (collectively referred to as the "microwave industry") have held a series of meetings during the past month with the PCS industry to discuss concerns regarding the 2 GHz relocation rules. These rules, establishing a framework for the mandatory relocation of the microwave industry to make way for PCS, were promulgated in 1993 by the FCC with very intense Congressional oversight.

Although only four months have elapsed since the first PCS licenses were awarded, the PCS industry is alleging that some microwave licenses are abusing the process established in the rules. The PCS industry has not responded to repeated requests from the microwave industry to identify any "bad actors."

Pursuant to the on-going meetings with the PCS industry, the microwave industry has drafted the following principles which would serve as the basis for a voluntary alternative dispute resolution (ADR) procedure. The ADR procedure could be utilized by incumbents and PCS licensees in resolving disputes over 2 GHz relocations. The microwave industry and the PCS industry share the view that a properly drafted ADR procedure will assist microwave incumbents and PCS licensees in reaching mutually-beneficial relocation agreements.

The microwave industry believes that a voluntary ADR procedure for 2 GHz relocation negotiations and agreements should:

- Be available to both PCS licensees and incumbents;
- Resolve issues quickly;
- Involve a third-party decision-maker outside of the FCC to minimize required FCC resources;
- Require mutual agreement on the identity of third party decision-maker;
- Be based on the rules for alternative dispute resolution of the American Arbitration Association;
- Establish the FCC in an appellate role to make final decisions in the event of a dispute over the ADR process or enforcement of the outcome;

- Require the parties to jointly file a notice with the FCC that they have decided to avail themselves of the ADR procedure for a specific issue; and
- Permit the details of a resolution proceeding to be kept confidential at the request of either party.

The microwave industry is committed to continuing its discussions with the PCS industry over this matter. If a voluntary procedure can be agreed to by both sides, the trade associations representing the incumbents and the PCS licensees should sign a joint statement indicating support for this procedure. These same trade associations should take an active role in educating their members as to the procedure.

These principles represent the incumbents' view of the basic framework for an ADR procedure. Input from the PCS industry on these basic issues is necessary before further details can be developed. Among the issues to be addressed are the following:

- What is the standard that the third-party decision-maker will use in resolving a dispute?
- When could the ADR procedure be initiated?
- If ADR is utilized, what is its effect on the remaining negotiation time period for that incumbent and PCS licensee?
- How will the expense of the ADR procedure be allocated?

We look forward to working with the PCS industry to resolve these issues. If there are any questions regarding this matter, please contact Tom Goode, UTC Staff Attorney, at (202) 872-1160.

LIST OF ASSOCIATIONS PARTICIPATING IN DISCUSSIONS

Association of American Railroads

American Gas Association

American Public Power Association

American Water Works Association

Association of Public-Safety Communications Officials International

Cellular Telecommunications Industry Association

Edison Electric Institute

Interstate Natural Gas Association of America

National Rural Electric Cooperative Association

UTC, The Telecommunications Association

UTC
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December 19, 1995

Wallace Henderson
Cellular Telecommunications Industry Association
1250 Connecticut Ave., NW
Suite 200
Washington, DC 20036

Re: Microwave Industry ADR Proposal

Dear Wallace:

On November 3, the 2 GHz incumbent microwave presented you with a statement of principles regarding an alternative dispute resolution (ADR) procedure for resolving 2 GHz relocation disputes. These principles were the result of a series of meetings with your organization and represented our attempt to establish a basis for future discussions regarding this matter.

It has been over five weeks since this correspondence, and we have not heard back from you regarding these principles, or about the possibility of a non-legislative solution to this problem. Our recent contact has been limited to the exchange of lobbying materials. The incumbent microwave community would very much like to discuss an industry solution and is awaiting your response to our statement of principles. In order promote a speedy resolution to this process, we request that you provide a written response by January 4, to let us know whether our statement of principles should form the basis for further discussions, or whether you have alternative ideas for our consideration.

Please contact me if you have any questions or comments.

Sincerely,

Thomas E. Goode
Staff Attorney

VIA FAX

Building The Wireless Future

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Wallace J. Henderson
Vice President for Congressional Affairs

December 20, 1995

Thomas E. Goode
UTC
1140 Connecticut Ave.,NW, Suite 1140
Washington DC 20036

Dear Tom:

It was good to hear from you after so many weeks with no respons[illegible]. As you know, and contrary to what your letter to me indicates, I had responded to your initial fax immediately, laying out a proposal that incorporated most of the ADR outline which you sent to me. Unfortunately, I was advised by members of the incumbent coalition that this was not acceptable, and no counter offer was forthcoming from you. Subsequently, I sent you (via INGAA) a draft proposal which would provide a means to address a situation where the parties to voluntary negotiations are deadlocked in disagreement. This, too, was opposed by the incumbent group with no counter offer.

It appears that, for consistency's sake, you and the incumbents you represent are employing the same tactics in pretending to comply with the colloquy between Senators Hollings and Breaux that you have employed in many instances in engaging in voluntary negotiations - bad faith and stonewalling to increase your leverage.

I cannot continue to rely upon representations that you are willing to work out an acceptable solution when, in fact, you have simply adopted a process whereby the incumbents mark time, waiting for and then rejecting legitimate and workable proposals without discussion. While that certainly works to your advantage both here and in actual relocation negotiations, I don't think that is what either Senator Hollings or Senator Breaux had in mind when they expressed concern about the tactics being employed by many incumbents during the voluntary negotiation period.

Very truly yours,

Wallace Henderson